



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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GOVERNMENT NOTICE

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Government Notice

MINISTRY OF WORKS, TRANSPORT AND COMMUNICATION

No. 163

2005

PUBLICATION OF PARTICULARS OF AN AGREEMENT ENTERED INTO IN TERMS OF SECTION 111(1) OF THE ROAD TRAFFIC AND TRANSPORT ACT, 1999 (ACT NO. 22 OF 1999)

In terms of subsection (4) of section 111 of the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999), the particulars of an agreement entered into, under subsection (1) of that section, between the Minister of Works, Transport and Communication and the Roads Authority, established by section 2 of the Roads Authority Act, 1999 (Act No. 17 of 1999), are set out in the Schedule.

SCHEDULE

PARTICULARS OF AGREEMENT ENTERED INTO BETWEEN THE MINISTER OF WORKS, TRANSPORT AND COMMUNICATION AND THE ROADS AUTHORITY

1. Interpretation

Unless the context otherwise indicates, every word or expression in this Agreement has the meaning attached thereto in the Act, and -

“Act” means the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999) and includes any regulations or other instrument promulgated under it;

“Agreement” means this Agreement and every Annexure or other instrument attached to an Annexure in accordance with the provisions of the Agreement;

“Minister” means the Minister of Works, Transport and Communication;

“Party” means a party to this agreement and “Parties” means all Parties to this Agreement;

“Roads Authority” means the Roads Authority established by section 2 of the Roads Authority Act, 1999 (Act No. 17 of 1999); and

“Road Fund Administration” means the Road Fund Administration established by section 2 of the Road Fund Administration Act, 1999 (Act No. 18 of 1999).

2. Functions to be performed by Roads Authority

The Roads Authority must perform the following functions under the Act on behalf of the Minister:

- 2.1. The issuing of cross border road transport permits under sections 70 and 71 of the Act;
- 2.2. The issuing of authorisations under section 99 of the Act;
- 2.3. The administration of the Namibian Traffic Information System with regard to the registration and licensing of motor vehicles, the registration of manufacturers, importers, builders and manufacturers of number plates, the registration of vehicle testing stations; the registration of driving testing centres; the register of drivers; the register of operators; the register of offences; the register of authorised officers and the register of authorised users in terms of regulation 377 of the Road Traffic and Transport Regulations, 2001;
- 2.4. The management of registering authorities appointed by the Minister in terms of section 10 of the Act;
- 2.5. The management of driving testing centres appointed by the Minister in terms of section 27 of the Act in accordance with the schedule included in Annexure A hereto;
- 2.6. The management of vehicle testing stations appointed by the Minister in terms of section 54 of the Act in accordance with the schedule included in Annexure A hereto;
- 2.7. The development and maintenance of property for the purposes of the functions described in paragraphs 2.5 and 2.6;
- 2.8. Law enforcement with regard to -
 - 2.8.1. overload control;
 - 2.8.2. cross-border transport control;
 - 2.8.3. domestic passenger transport control;
 - 2.8.4. transportation of dangerous goods by road;
 - 2.8.5. drunken driving;

- 2.8.6. driver and vehicle licensing; and
- 2.8.7. vehicle roadworthiness:

Provided that law enforcement with regard to drunken driving, driver and vehicle licensing and vehicle roadworthiness is seen as duties ancillary to the core functions of overload control, cross border transport control; passenger transport control and the control of the transportation of dangerous goods by road.

- 2.9. The authorisation of refunds as contemplated in section 100 of the Act, as far as it relates to the functions conferred on the Roads Authority in terms of this Agreement;
- 2.10. The authorisation of racing and sport on public roads in terms of regulation 352 of the Road Traffic and Transport Regulations, 2001.

3. Dispute Resolution

- 3.1 The Parties must attempt to settle any dispute arising from the performance of any function in terms of this Agreement, amicably.
- 3.2 Failing the amicable settlement of a dispute, the aggrieved Party must declare a dispute and the dispute must be referred to mediation by a single mediator within 30 days of the declaration of the dispute. The mediator must be appointed by agreement by the Parties, and failing such agreement, be nominated by the Chairperson of the Society of Advocates.
- 3.3 The cost of the mediator and the mediation facility, if any, must be shared equally by the Parties and the Parties must each bear its own additional cost incurred in the process preceding mediation or the mediation.
- 3.4 If either party is unwilling to agree to mediation or is dissatisfied with the opinion expressed by the mediator or should the mediation fails, then such Party may with the consent of the other Parties refer the dispute to arbitration by a single arbitrator to be mutually agreed upon, or failing such agreement, be nominated by the Chairperson of the Society of Advocates.
- 3.5 Referral to arbitration under sub clause 3.4 shall take place, within three calendar months of the date of the mediator's opinion or the date upon which the mediator declares the mediation has failed. Claims not brought within the time periods set herein shall be regarded as waived.
- 3.6 Judgement upon the award rendered in any arbitration proceedings may be entered in any competent Court by any of the Parties involved in the application may be made to such Court for a judicial acceptance of the award and an order for enforcement (as the case may be).
- 3.7 The decision of the arbitrator shall be final and binding on all Parties.

4. Contact Persons

Each Party must appoint a contact person for the purpose of this Agreement and notify the other Party, in writing, accordingly, within 30 days of signature of this Agreement or within 30 days of the substitution of the contact person.

5. Meetings

The Parties must appoint representatives who must meet at least twice a year to review this Agreement.

6. Secretariat

The Ministry must perform the secretarial functions in relation to the meetings between the Parties.

7. Termination

Any Party to this Agreement may, except where the continuance of the Agreement is of relevance to finalise any dispute arising from it, withdraw from this Agreement on at least 12 months' written notice served on the other Party at its domicile.

8. Status of this Agreement

8.1 Unless obviously inappropriate or otherwise agreed on by the Parties in writing, the provisions of the Annexure to this Agreement forms an integral part of this Agreement.

8.2 This Agreement does not detract from the right of the Minister or any staff member in the Ministry of Works, Transport and Communication designated by the Minister to issue, after consultation with the Roads Authority, directives to the Roads Authority in connection with any function to be performed in terms of this Agreement.

9. Indemnification

9.1 The personnel employed by the Roads Authority and who perform any function in terms of this Agreement may not personally be held liable for any loss or damage arising out of the performance of his or her duties in terms of this Agreement unless the loss or damage is due to his or her wilful misconduct or gross negligence.

9.2 In addition to paragraph 9.1, the Parties indemnify each other against any loss or damage resulting from the negligent (gross or otherwise) or wilfully incorrect performance of its duties in terms of this Agreement.

10. Power of Minister

Notwithstanding this Agreement, the Minister may, after consultation with the Roads Authority, exercise any power conferred on the Roads Authority in terms of this Agreement, amend, or withdraw any decision made by the Roads Authority in relation to the performance of any function given to it in terms of this Agreement.

11. Compensation

11.1 The Roads Authority must annually, before 31 August submit to the Minister a detailed estimation of expenditure for the next financial year in relation to the performance of the functions conferred on it in terms of this Agreement.

11.2 The Minister must, before 30 September each year, in consultation with the Road Fund Administration, approve the estimation of expenditure submitted by the Roads Authority or refer it back to the Roads Authority.

- 11.3 If the Minister has referred the estimation of expenditure submitted by the Roads Authority in terms of this paragraph back to it, the Roads Authority must submit the amended estimation to the Minister before 31 October of the year concerned.
- 11.4 The Minister must, in relation to the functions contemplated in clause 2 of this Agreement, before 30 November each year, submit a budget as contemplated in section 20 of the Road Fund Administration Act, 1999, to the Road Fund Administration, including the estimation of expenditure submitted to him or her by the Roads Authority in terms of clause 11.1.
- 11.5 The budget referred to in clause 11.4 must indicate the estimation of cost in relation to each function performed by the Roads Authority in terms of this Agreement, together with the estimated contribution from the Minister and the required contribution from the Road Fund Administration.

12. Payment

- 12.1 The responsibility to pay for services rendered in terms of this Agreement is determined in terms of section 17 of the Road Fund Administration Act.
- 12.2 Payments for which the Road Fund Administration is responsible forms part of the annual budget of the Roads Authority that is submitted to the Road Fund Administration in terms of section 20 of the Road Fund Administration Act, 1999.
- 12.3 Any payment by the Minister for services rendered by the Roads Authority in terms of this Agreement must be made into the Road Fund.
- 12.4 The Roads Authority must quarterly advise the Road Fund Administration to submit an invoice based on actual costs to the Minister in relation to those functions, the cost of which must be borne by the Minister and those functions to which the Minister must make a contribution.
- 12.5 The Minister must pay the amount due in terms of the invoice referred to above without undue delay.

13. Undertaking by Parties

- 13.1 The Roads Authority undertakes to enter into an agreement with the registering authorities, vehicle testing stations and driving testing centres managed by it in terms of this Agreement to regulate the quality of the performance of the relevant registering authorities, driving testing centres or vehicle testing stations.
- 13.2 The Roads Authority undertakes to submit and present to the Minister bi-annually, reports on their performance in respect of the functions conferred upon the Authority in terms of this Agreement as measured against their Performance Statement. One of the reports must be submitted at least one month before the date for the submission of their annual report, the second report must be submitted not later than 6 months after submission of the first report.
- 13.3 The Roads Authority undertakes to include the operational objectives and general strategy pertaining to the functions given to it in terms of this Agreement in the performance statement submitted to the Minister in terms of section 18 of the Roads Authority Act, 1999 (Act No. 17 of 1999).
- 13.4 In the event of litigation against either Party, the Parties undertake to support each other in relation to access to information, advice and any other reasonable request.

14. Domicile

14.1 The domicile of the Minister of Works Transport and Communication is -

Ministry of Works, Transport and Communication
Snyman Circle
Bell Street
WINDHOEK

14.2 The domicile of the Roads Authority is -

Ministry of Works, Transport and Communication Building
Snyman Circle
Bell Street
WINDHOEK

14.3 Notices in terms of this Agreement must be served on the above addresses.

14.4 If any Party changes its domicile, it must notify the other Party in writing and after such a notification has been served on the other Party, it will form part of this Agreement.

15. Amendment of Agreement

This Agreement may be amended by the mutual written consent of the Parties to an amendment proposed by any of the Parties.

16. Commencement

This Agreement commenced on 1 April 2004.

ANNEXURE A

Location / Town	Hand-Over Date	Note
1. Swakopmund	28 September 1998	
2. Gobabis	5 November 2001	
3. Keetmanshoop	5 November 2001	
4. Mariental	5 November 2001	
5. Otjiwarongo	5 November 2001	
6. Tsumeb	5 November 2001	
7. Walvis Bay	5 November 2001	
8. Grootfontein	15 January 2003	
9. Karasburg	To be determined	1
10. Karibib	To be determined	1
11. Okahandja	5 December 2003	
12. Outjo	5 December 2003	
13. Ongwediva	To be determined	2
14. Windhoek	To be determined	2
15. Eenhana	To be determined	3
16. Katima Mulilo	To be determined	3
17. Lüderitz	To be determined	3

18. Opuwo	To be determined	3
19. Oranjemund	To be determined	3
20. Outapi	To be determined	3
21. Rundu	To be determined	3
Note	Comment	
1	Hand-over date is subject to the following: (a) Examiners already trained but need to obtain necessary driving licences.	
2	Hand-over date is subject to the signing of a Memorandum of Agreement between the Roads Authority and an Agent.	
3	Hand-over date is subject to the following: (a) signing of a Memorandum of Agreement between the Roads Authority and an Agent, and (b) availability of funds to construct the VTS & DTC.	
